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The Elusive Quest for Global Justice

Cover Page Footnote

Associate Professor of Law, Ohio State University College of Law. Many thanks to Marty Flaherty and Tracy Higgins for organizing this symposium and for their thoughtful comments. This article grows out of earlier work presented at the Columbia Legal Theory Workshop, the Georgetown Biennial Colloquium on Constitutional Law, and the Mershon Center Colloquium on World Affairs; my thanks to the organizers and participants of those fora, especially Anne Alstott, Richard Briffault, Jim Fleming, George Fletcher, Kent Greenawalt, Stan Laughlin, Thomas Pogge, Andrej Rapaczynski, Peter Strauss, and Mark Tushnet. I also thank my colleagues John Quigley, Allan Samansky, and Peter Swire for their helpful comments and suggests.

SYMPOSIUM

THE ELUSIVE QUEST FOR GLOBAL JUSTICE

Edward B. Foley*

INTRODUCTION

LET us take as a given that all humans, regardless of nationality, have equal intrinsic worth. The question is whether this principle, which I shall call intrinsic equality, requires giving the United Nations, or some comparable global institution, the authority to impose worldwide redistributive taxation for the benefit of the world's poorest people. Although others have suggested that it should,¹ I shall argue that it does not.

At first, I, too, believed that justice for all humanity required a global legislature with taxing powers analogous to those of the United States Congress. Congress has these powers because the intrinsic equality of all U.S. citizens requires the existence of a national legislature with the authority to enact nationwide redistributive taxation for the benefit of the poorest Americans.² Once it is accepted that all humans around the world are intrinsically equal in exactly the same way as are all U.S. citizens, it would seem to follow that there ought to be a global legislature with worldwide taxing powers equivalent to the nationwide taxing powers of Congress.

To be sure, within the United States there is a lively dispute over how heavy the redistributive tax burden should be, and correspondingly how generous should be the benefits to the nation's poorest citizens. But this dispute is precisely why it is necessary to have a democratic legislature with the authority to decide this issue. As long as the members of Congress are elected democratically, a fair process

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1. See Charles R. Beitz, *Political Theory and International Relations* 128, 151-53 (1979); Thomas W. Pogge, *Realizing Rawls* 240, 250-51 (1989); David A.J. Richards, *International Distributive Justice*, in *Nomos XXIV: Ethics, Economics and the Law* 275, 292 (J. Roland Pennock & John W. Chapman eds., 1982).

2. For arguments explaining why intrinsic equality requires giving Congress the power of redistributive taxation, see Amy Gutmann & Dennis Thompson, *Democracy and Disagreement* (1996), and Jeremy Waldron, *Liberal Rights* 225-308 (1993).

exists for determining the nation's level of redistributive taxation.³ The legislature is free to set the level high or low, and, wherever the level is set, the fundamental principle of equal citizenship has been satisfied.

Now, some argue that the level of redistributive taxation cannot fall below a certain minimum level without violating the equal intrinsic dignity of all citizens. But even these advocates for the poor would acknowledge that as long as this minimum threshold has been satisfied, the democratic legislature must have the discretion to decide whether or not to be more than minimally generous.⁴ Moreover, virtually no one would claim that the legislature must be *denied* the authority to adopt redistributive levels more generous than the bare minimum. Thus, Congress has the authority to adopt high rates of progressive taxation for the purpose of making available a high level of guaranteed minimum income to all U.S. citizens. Congress may choose not to exercise this authority (to exceed the minimum), but the authority unquestionably exists.

And so, to repeat the basic problem: if all humans in the world are intrinsically equal in the same way that all U.S. citizens are, then a global legislature should have the same authority to adopt generous levels of redistributive taxation that Congress has. Most Americans, of course, would strongly object to the idea that a global legislature should be empowered to tax their wealth for the benefit of the destitute in other parts of the world. Indeed, even those affluent Americans who accept that Congress should have the power to tax them for the benefit of less fortunate Americans reject applying the same idea on a global scale. Perhaps their resistance to worldwide redistributive taxation is simply a selfish failure to recognize the moral force of the fundamental principle of intrinsic. Perhaps, in other words, if Americans were truly good, they would embrace the idea of giving a global legislature the same taxing power that Congress has.⁵

3. Of course, to be truly fair, a citizen's formal right to an equal vote must be supplemented by an egalitarian system of electoral finance, one which gives citizens equal opportunities to attempt to influence the electoral process in accordance with their own electoral preferences. I have discussed this point in detail in another article. See Edward B. Foley, *Equal-Dollars-Per-Voter: A Constitutional Principle of Campaign Finance*, 94 Colum. L. Rev. 1204 (1994).

4. For example, in a recent work the preeminent political philosopher John Rawls has acknowledged that while a decent minimum standard of living is a "constitutional essential," a more extensive redistribution of wealth is a program that a legislature reasonably could reject—and therefore must be free to do so. See John Rawls, *Political Liberalism* 228-29 (1993).

5. Before such a global legislature could come into existence, the issue of representation would need to be resolved. The U.N. General Assembly is presently structured according to the principle of one nation, one vote. But before the General Assembly acquired any powers of taxation, this method of representation would need to change, as populous countries clearly would object to taxes imposed on them by countries with small populations. Thomas Franck has recommended that the General Assembly be reformed along the same lines as the U.S. Congress, so that it is a bicam-

In this essay, however, I argue to the contrary. I claim, instead, that there are good reasons for rejecting the idea of worldwide redistributive taxation even if we wholeheartedly affirm the principle of intrinsic equality. As I explain, the analogy between national and global government breaks down. There are reasons for holding national governments responsible for the welfare of their citizens that do not apply on a global scale. Thus, while equality among citizens of a nation-state requires a national government with redistributive taxing power, the equality of all humans does not entail a comparable global government.⁶

I. OBSTACLES TO A GLOBAL STATE

The world is simply too big for it to be subject to a single global economic management. The rich nations of the world cannot prevent the poor nations from continuing to mismanage their own economies. If the poor nations were to adopt certain economic policies, including population control and investment in human capital, those nations could considerably improve the living standards for their peoples. But it is impossible for the rich nations to ensure that the poor nations implement sound economic policies. Indeed, the lesson of the Somali debacle is that rich nations cannot even guarantee that people living in the poorest nations will have enough food to eat—at least not without massive and sustained military intervention that will cost many soldiers their lives and result in a neo-colonialist regime.⁷ And if the rich nations cannot guarantee even enough food to survive, it is obviously impossible for the rich nations to guarantee that the poor nations will implement sensible population control policies or will invest enough resources in educating their own citizenry.

To put the point even more starkly, the example of Somalia shows the inability of the United Nations to guarantee effectively a funda-

eral legislature, one chamber of which has representation structured on the basis of population, while the other one adheres to the formula of one nation, one vote. See Thomas M. Franck, *Fairness in International Law and Institutions* 483-84 (1995). Franck, however, has not argued that, even as reformed in this way, the General Assembly should be given any power to impose binding laws—at least not initially. *Id.*

6. In considering whether justice requires a global legislature with the power of redistributive taxation, this essay obviously tackles a large enough subject without having to take on other issues that might be thought to fall within the scope of global justice.

7. As two knowledgeable commentators have aptly observed, the first and foremost lesson from the Somali experience is that “there is no such thing as a humanitarian surgical strike.” Walter Clarke & Jeffrey Herbst, *Somalia and the Future of Humanitarian Intervention*, *Foreign Affairs*, Mar.-Apr. 1996, at 70, 82. The authors of this commentary—one of whom was deputy chief of mission at the U.S. embassy in Somalia during the ill-fated operation, and the other of whom is a professor at Princeton University—go on to acknowledge that to guarantee success in a situation like Somalia would require updating the colonialist concept of “trusteeship” to permit the United Nations, with its own army, to take over governance of a country whose own regime has failed to protect its people from starvation. *Id.* at 84.

mental human right to adequate nutrition. If such a right is to be meaningful, it must be enforceable even when there is a collapse of an organized and functioning civil government in a particular locality, as was the case in Somalia. The need to eat remains regardless of political circumstances. Thus, if for whatever reason, civil unrest occurred in Mississippi, and as a result low-income citizens in Mississippi were in danger of starvation, the federal government would send in federal troops to stop the unrest and guarantee the safety of the citizens. In short, a right to adequate nutrition could be meaningfully enforced by the federal government in the domestic context of the United States. But, as the lesson of Somalia demonstrates, there can be no comparable guarantee of meaningful enforcement in the international context.

For decades, international development organizations have tried to encourage the poorest nations to adopt economic policies that will improve the standard of living for their peoples. Thus far, the results of these efforts have not been encouraging, particularly in Africa, still the poorest continent.⁸ Political corruption and ineptitude among local elites have largely prevented sound development policies from taking root.⁹ Even if international development agencies so desired, there would be no way to impose sound economic policies on these nations. To enforce such measures would require the invasion of occupation armies far greater than anything imaginable in previous history, and even then there would be no guarantee of success.

But without any guarantee of sound economic management in the poor nations of the world, there is no possibility of worldwide redistributive taxation analogous to the kind that occurs within each nation-state. Simply put, the citizenry of affluent nations are not going to agree to tax themselves if the revenue will be wasted on corrupt dictators and their cronies, with no benefit ever reaching the unfortunate peoples of these nations. And who can argue with this conclusion? There can be no moral duty to give to the poor if it is impossible to get the money into the hands of the poor (instead of the corrupt elites in the local government).

The inevitable conclusion, then, is that each nation must be ultimately responsible for its own economic destiny. Indeed, consider this startling fact: at the beginning of this century, the level of per capita income for both the United States and Argentina was roughly

8. See Carol Lancaster, *Economic Reform in Africa: Is It Working?*, 13 Wash. Q. 115, 117 (1990) ("By the end of the 1970s, the consequences of two decades of economic mismanagement were beginning to figure not only in the declining rates of agricultural growth but in the declining volumes of exports as well."). Moreover, critics of international aid organizations have argued that many of their policies and programs have been counterproductive. See Michael Maren, *The Road to Hell: The Ravaging Effects of Foreign Aid and International Charity* (1997).

9. See John Darnton, "Lost Decade" Drains Africa's Vitality, N.Y. Times, June 19, 1994, at A1; Peter Passell, *New Ideas Go Beyond Handouts in the War on African Poverty*, N.Y. Times, Mar. 13, 1997, at D2.

the same.¹⁰ At the time, it would have been impossible to predict that almost a century later, one nation's per capita income would be about quadruple the other's (\$23,240 to \$6050, respectively).¹¹ Just because the United States has consistently managed its economy better than Argentina has, it does not follow that Americans ought to pay redistributive taxes to Argentineans to equalize the gap in their per capita income. Instead, the people of Argentina should look to their own national government to get their own economic house in order, so that they can adopt national redistributive taxes that will improve the lives of their poorest citizens.

Similarly, today Nepal and Uganda have roughly the same per capita income (\$170).¹² If over the next decade, however, one of these two countries adopts economic policies that enables it to grow much richer than the other, while the other country continues the mismanagement of the past, why should the citizens of the well-managed country be forced to pay taxes to send to those living in the ill-managed regime? Instead, those living in the well-managed country, including its poorest citizens, should reap the rewards of their superior policies, and the citizens of the other country should encourage their government to adopt similarly successful policies.

Perhaps this point is self-evident, but in any event I shall elaborate. Assume that today two countries, Acadia and Barbaria, have exactly the same population size, ten million, and exactly the same per capita income, \$1000. Thus, the aggregate national income of both countries is the same: \$10 billion. Suppose further that both countries are able to double their aggregate national income during the next twenty years. But during that same time period, Acadia doubles the size of its population, while Barbaria maintains zero population growth. Thus, at the end of twenty years, Acadia still has a per capita income of \$1000, while Barbaria has doubled its per capita income to \$2000. Surely, the Barbarians should not be required to share their extra income with the Acadians just because Acadia failed to adopt the same population policy as Barbaria.

10. See Richard Reeves, *The Brutal Plummet of Argentina*, *The Record*, Mar. 9, 1990, at B7, available in LEXIS, News Library, Arcnws File; see also Editorial, *Time of Hope in Argentina*, *Washington Post*, Nov. 1, 1983, at A10 (noting that Argentina's standard of living was at least as high as that of the United States at the turn of the century). As the *Post* observes, although Argentina is one of the world's richest countries in terms of natural resources, it has "kicked away great prosperity through perverse and repeated political mistakes." *Id.*

The same point is made more generally by David Henderson, in an article in which he makes a number of comparisons among nations in their differential abilities to undertake economic development. His general point is that a nation's policy choices, and not its natural resources, determine its economic fate. See David R. Henderson, *Economic "Miracles,"* *Society*, Sept.-Oct. 1995, at 59.

11. World Bank, *World Development Report* 1994, at 162-63.

12. *Id.*

Similarly, suppose instead that both countries maintain a zero rate of population growth over the twenty-year time period, but Barbaria adopts a national savings rate double that of Acadia. The higher savings rate—which translates into increased investment in education, infrastructure, and other forms of capital—causes Barbaria to have a higher rate of economic growth than Acadia. As a result, at the end of two decades, Barbaria's aggregate national income is double that of Acadia, \$40 billion instead of \$20 billion. Thus, Barbaria has a per capita income of \$4000, compared to \$2000 for Acadia. Again, it seems apparent that the Barbarians' extra income should not be taxed for the benefit of the Acadians. Acadia could have adopted the same savings rate that Barbaria did, but it did not. The Barbarians should not be penalized for Acadia's poor policy choices.¹³

The argument might be made that because the children of Acadia did not choose the disastrous economic policies that failed to increase their country's per capita income, these children should not suffer on account of these policies. The problem with this argument, however, is that if the Barbarians are going to be required to share their wealth with Acadian children, then Barbaria is going to insist upon having the authority to force Acadia to adopt sensible economic policies in the future. "We will not waste our money bailing out Acadia," the Barbarians will say, "unless we have reasonable assurances that Acadia will not mess up again."¹⁴

But consider the implications of giving Barbaria the authority to control the choice of Acadia's economic policies. Suppose, again, that a primary reason for Acadia's low per capita income is its high fertility rate. Should Barbaria have the authority to insist that Acadia adopt a zero rate of population growth? And what if Acadia fails to comply, in part because Acadia's cultural values are different from Barbaria's? Should the Barbarian army have the authority to sterilize Acadians to make sure that compliance occurs? One shudders at the thought, which Acadians would rightly denounce as the worst sort of neo-colonialist nightmare. But, then, if the Barbarians cannot enforce compliance with high-growth economic policies, the consequence is that Barbarians cannot be expected to share their wealth with Acadia.

13. John Rawls has made a similar point in an as-yet-unpublished revision of his essay *The Law of Peoples*. John Rawls, *The Law of Peoples* (Mar. 22, 1993) (unpublished manuscript, on file with author). The original version is collected in *On Human Rights: The Oxford Amnesty Lectures 1993*, at 41 (Stephen Shute & Susan Hurley eds.) [hereinafter Rawls, *The Law of Peoples*]. James Buchanan uses a similar example to discuss issues of immigration. See James Buchanan, *A Two-Country Parable*, in *Justice in Immigration* 63-65 (Warren F. Schwartz ed., 1995).

14. Examples of the same demand for accountability can be found much closer to home. In my home state of Ohio, where the legislature has been ordered to raise revenues for school districts in low-income counties, the legislature has insisted on adopting measures that will make local school districts much more accountable for their financial practices. See Catherine Candinsky, *Governor Signs 2 School Measures*, Columbus Dispatch, Aug. 27, 1997, at 1C.

After all, if Acadia is to be free to reject the policy of zero population growth, then Barbaria must be free to reject sharing the benefits of that policy with Acadians.

This point explains why the objection to global redistributive taxation does not apply with equal force at the level of the nation-state. We can imagine a family with only one child objecting to having to pay taxes to support a family with three children. "Because we choose not to have as many children in order to be able to accumulate more wealth per child," the small family might argue, "we should not have our savings diminished in order to subsidize the decision of other families to have more children." This argument, indeed, may be persuasive, but the key point here is that within any nation-state, a democratic legislature is free to accept or reject this argument. In the context of the entire world, by contrast, the decisive objection is to the existence of *even* an institution that has the power to decide whether or not to adopt worldwide legislation concerning family size and the distribution of wealth.¹⁵

Thus, the children of Acadia ultimately must rely on the elders of their own country to provide for their welfare. They cannot look to the Barbarians to save them from the economic mistakes of their elders. The implication of this conclusion is that the Acadian children may be left in misery, but this misery is the price of the freedom that Acadia must have to choose its own destiny, without the imposition of Barbarian colonialism.

Now, if Acadia lacks a democracy, even its adult citizens reasonably may claim that they cannot ensure that their government will adopt sensible economic policies, and if they cannot control their country's economic policies, then they should not suffer as a result of the mistaken choices their leaders make on their behalf. The remedy for this situation is to institute democracy within all the countries of the world, so that each country can be held responsible for its own economic

15. There are obviously important and difficult questions of domestic constitutional law concerning the powers of a democratic national legislature to enact certain population control policies or compulsory education standards. These constitutional questions, which must be left for another occasion, suggest potential problems with some forms of redistributive taxation even on a national level. If citizens of a nation-state have inviolable constitutional rights to reproduce as many children as they wish, or to refuse to educate them in ways that will make their children economically self-sufficient, then it becomes difficult to justify taxing other families to support the children of these (arguably) irresponsible families. I have touched on this issue to some extent in Edward B. Foley, *Social Justice and Child Poverty*, 57 Ohio St. L.J. 485, 488-94 (1996).

Nonetheless, the important point to remember here is that any objection to domestic redistributive taxation based on this point is a *policy* objection—Congress still has the power to adopt the taxes if it wishes. In contrast, the problem at a global level is *constitutional* in the sense that, whatever global constitutional structure ideally ought to replace the current U.N. Charter, this "ideal constitution for the world" would *not* include a global legislature (elected on a worldwide democratic basis) with the power to impose worldwide progressive income taxes.

destiny, rather than to impose worldwide redistributive taxation.¹⁶ The problem with this remedy, however, is that it is unfortunately impossible for the United Nations to guarantee a democratic form of government to all the nations of the world. The United Nations cannot guarantee democracy even for Hong Kong, much less for the whole of China. It is thus obvious that the United Nations cannot guarantee democracy for the whole world.

To be sure, the United Nations (or the United States acting unilaterally) might be able to force some small and relatively powerless countries to adopt democratic forms of government. But even the U.S. experience with Haiti should raise a note of caution. It is extraordinarily difficult for a foreign power to foster the cultural conditions necessary for a democracy to sustain itself. Moreover, even if success were possible in an isolated case or two, it would seem utterly infeasible to sustain the endeavor on a worldwide basis. Again, the invasion of military forces necessary to impose democracy on all the small countries of Asia, Africa, and South America would stretch the capacities of the industrialized democracies—Europe, North America, Australia, and Japan—far beyond anything worth contemplating.

The unavoidable truth is that ultimately each nation of the world must be responsible for its own political as well as economic fate. The clamor for democracy must come from within. The people of each country must find within themselves the power to insist upon a democratic form of government. They cannot expect the United Nations to impose a democracy upon their rulers.

Thus, the low-income undemocratic nations of the world are caught in a kind of catch-22. Without democracy, these nations cannot expect the affluent democratic nations to join them in a global regime with

16. Amartya Sen, the Nobel Prize-winning economist at Harvard University, has written that democracies are much more likely than dictatorships to prevent situations in which some of their people are starving to death. This is true even when democracies have little wealth and then suffer natural disasters, like droughts, that easily could lead to famine. As Sen explains, "one of the remarkable facts in the terrible history of famine is that no substantial famine has ever occurred in a country with a democratic form of government and a relatively free press." Amartya Sen, *Freedoms and Needs*, *The New Republic*, Jan. 10 & 17, 1994, at 31, 34.

To support his point, Sen compares how two African democracies, Botswana and Zimbabwe, responded to crop failures worse than those occurring in two dictatorships, Sudan and Ethiopia:

Sudan and Ethiopia, with comparatively smaller declines in food output, had major famines. Botswana and Zimbabwe had none. The happy outcome in the latter countries was largely the result of timely and extensive famine-prevention policies by these latter countries. And democracy, which included a relatively uncensored press, made such policies imperative. For had the governments in Botswana and Zimbabwe failed to do this, they would have come under severe criticism from the political opposition. The Ethiopian and Sudanese governments, by contrast, did not have to reckon with such democratic inconveniences.

Amartya Sen, *Freedom Favors Development*, 13 *New Persp. Q.* 23, 25 (1996).

the authority to tax rich nations for the benefit of the poor. The affluent democracies will rightly object that unless democracy exists in the poor countries of the world, there can be no guarantee that any redistributive payments will benefit the people of the poor regimes in contrast to the elite. In addition, the affluent democracies have a legitimate ground to oppose any taxation adopted by a global regime that itself is not thoroughly the product of democratic elections (which, of course, it would not be since the representatives to the global legislature from the undemocratic nations would, by definition, not be elected through a democratic process). Thus, there can be no global redistributive taxation without democracy in all the nations of the world.

But if there is democracy in all the nations of the world, then there is no longer any justification for global redistributive taxation. This is the catch-22. If there is democracy in every nation of the world, then each national government should be held responsible for its own economic performance. If some democracies choose to have higher rates of population growth, or lower rates of national savings, than the worldwide average, then these democracies should be accountable for their choices. The rest of the world should not be forced to give up some of their economic advantages because of the low-income policies that some democracies have chosen for themselves.

In sum, there is no moral imperative for global redistributive taxation equivalent to domestic redistributive taxation within each nation-state. It is true that we are witnessing an era of rapidly increasing "globalization" of economic forces, and thus it is tempting to think that some day soon there should exist a global government with powers of taxation equivalent to those now held by a national legislature.¹⁷ But for all the increase in international trade and investment, there are still fundamental obstacles to the possibility of a worldwide democratic legislature that determines economics and social policies for the entire globe. The military authority necessary to enforce uniform global economic policies—empowering U.N. troops to control population growth rates, for example—is obviously not the kind of powers that people are prepared to entrust to a global government. The reasonable fear of global tyranny is much too great. Yet without a power to determine global economic policies, there is no basis for a worldwide legislature with the authority to impose worldwide redistributive taxation.

17. In 1994, for example, the annual report of the U.N. Development Programme ("UNDP") ambitiously urged the creation of a "global social safety net," to be financed by an income tax on the world's richest nations. See United Nations Development Programme, *Human Development Report 1994*, at 78.

II. A GLOBAL RESOURCE TAX

Still, there seems something wrong in saying that global justice does not require any global taxation at all. Some nations may have greater per capita income than others, not because of superior economic policies, but simply because they happen to possess more valuable natural resources. But if all humans in the world have equal intrinsic worth, regardless of nationality, as the principle of intrinsic equality holds, then it would seem wrong for some humans to have greater wealth than others just because their nation's soil happens to contain greater natural resources than the soil of other nations. In other words, if the principle of intrinsic equality is to be upheld, there must be some way for all the people of the world to share the natural resources of the world. The world itself and all the stuff within it belong equally to all of us, regardless of national boundaries, and thus there must be some global mechanism to distribute to everyone his or her fair share of the profits from mining the natural wealth of the world.

For this reason, I support the idea of a global resource tax.¹⁸ This tax, set by an international treaty, would collect a portion of the price of any natural resource extracted from any nation of the world. The price would reflect the value of the natural resource in its unrefined or unprocessed state, before being put to use in any way by human ingenuity. The treaty, which would determine the percentage of these prices to be collected by the tax, would require the unanimous consent of all nations to be truly global in scope.¹⁹

Of course, there would be tremendous difficulties in implementing any such global resource tax, not to mention the difficulties in getting all the nations of the world to consent to one.²⁰ But these practical

18. Similar taxes have been proposed by Thomas Pogge and Brian Barry. See Brian Barry, *Humanity and Justice in Global Perspective*, in *Nomos XXIV: Ethics, Economics and the Law*, *supra* note 1, at 219; Thomas W. Pogge, *An Egalitarian Law of Peoples*, 23 *Phil. & Pub. Aff.* 195 (1994).

19. It is possible that a global resource tax would have the effect of requiring poor nations to send money to rich ones. This would occur if poor nations extract more natural resources per capita than affluent nations, which might happen if poor nations rely heavily on mining operations as their primary source of income, while the affluent countries rely on the product of human capital (like computer software, pharmaceuticals, and other high-tech industries).

While this result might seem a bit disturbing at first, upon reflection it is just as it should be. If all the world's natural resources belong to all the people of the world, then no country—not even a poor one like Nigeria—should be able to appropriate these natural resources for its own benefit without reimbursing the other nations for their fair share of these resources. That Nigeria happens to be poor, while Japan is affluent, does not negate this conclusion. It simply means that Nigeria should adopt policies designed to encourage the formation of human capital, just as Japan has done. Those nations, like Japan, which have successfully developed their human capital should not be denied their fair share of the world's natural wealth just because they have been successful in this respect.

20. One very important practical difficulty is how to determine what counts as a natural resource. For example, should the fact that a particular nation is blessed with

difficulties do not negate the principle.²¹ If all the nations of the world decided to act justly, out of a common respect for the principle of intrinsic equality, rather than out of their own narrow self-interests, then all the nations of the world would unanimously agree to some such global resource tax.²² Thus, it is important to declare that, in principle, a commitment to global justice requires the adoption of at least one form of global tax, namely, a global resource tax.²³

But it is also important to make clear that a global resource tax, no matter how ambitious it might be, is a far cry from the kind of redistributive taxation that the legislatures of nation-states impose on their own citizens. A resource tax is designed to share only the value of the raw materials themselves. It is not designed to share in whatever value is added by subsequent human manipulation of the materials. Nor, obviously enough, is it an attempt to capture any value from human labor or intellectual property that never becomes mixed with raw materials as part of some manufacturing process. Thus, a resource tax is nothing like an income tax, which many democratic nations impose on their own citizens, and which is designed to spread the wealth deriving from human endeavors as well as natural resources. Income taxes presuppose to some extent that all citizens of a nation are engaged together in the common enterprise of improving the wealth of the nation as a whole.²⁴ While this presupposition is appropriate for each democratic nation-state, it does not apply to the globe as a whole, which can make no common democratic decisions concerning economic and social policies. Thus, at most, all the people of the world can agree to share the natural wealth of the world. They are not in a position to share the income that results in large part from a set of investment and other economic decisions that they have made collectively in the common enterprise of democratic self-government.

Moreover, the proceeds of a global resource tax need not be distributed on a per capita basis, as the proceeds of a domestic income tax surely should be. Rather, the treaty establishing a global resource tax

a natural harbor, perfect for shipping, count as a taxable natural resource? Or what about a nation's climate favorable for farming or tourism? I am inclined to consider these as natural resources, no less than oil, gold, or timber, but I leave a resolution of this issue aside for purposes of this essay.

21. The principle that the earth's resources belong to all the people of the earth has been recognized at least with respect to natural resources mined from the sea. Sixty countries have ratified the United Nations Convention on the Law of the Sea. United Nations Convention on the Law of the Sea, Oct. 10, 1982, 21 I.L.M. 1261 (entered into force Nov. 16, 1994). The United States, however, is not yet one of them.

22. Similar in principle to this resource tax would be an environmental damage tax, assessed on activities that have the effect of harming the world's environment.

23. In addition, there clearly would need to be some sort of method of reparations, requiring those nations who exploited natural resources in the past to reimburse the rest of the world for what they have already taken.

24. The requirement of social solidarity as a predicate for redistributive taxation within a nation-state is a point emphasized in John Rawls's *A Theory of Justice* (1971).

might establish appropriate population levels for each nation of the world and thus would distribute the proceeds from the tax in accordance with these benchmark population levels, regardless of the actual population in each nation. By contrast, any fair system of wealth redistribution within a single nation-state would ensure that every person below the poverty line participates on equal terms in the redistribution program, regardless of the nation's rate of population growth.

Thus, as important to global justice as the adoption of a global resource tax may be, one should not confuse this idea with the idea of a worldwide wealth redistribution program analogous to those in place within each nation-state. Even if the former is required in principle, the latter is not. Therefore, the demands of global justice can never be as extensive as the demands of social justice within each nation-state.²⁵

III. LIMITS ON MIGRATION

The global poor, however, may not be satisfied with a global resource tax. They may look to the affluent nations of the world and see them enjoying a standard of living much greater than their own, despite their receipt of proceeds from the global resource tax. The affluent nations may have greater prosperity because of lower birth rates or higher rates of savings. Either way, the global poor may wish to emigrate to these more prosperous nations.

Thus, the question inevitably arises whether it is just for the affluent nations of the world to limit immigration from the poorer nations.²⁶ If the principle of intrinsic equality holds true, then should not the United States and other affluent nations open their borders to anyone who wishes to come, without regard to nationality? After all, if a person born in Bangladesh has the same intrinsic worth as a person born in Boston, then should not the native of Bangladesh have the same inalienable right to live in Boston, if he so desires, as the Boston native does? The cultural opportunities of living in Boston may be unique, and why should the intrinsically equal native of Bangladesh be deprived of these opportunities on account of an accident of birthplace?

The problem, however, with opening an affluent nation's borders to unlimited immigration is that it would destroy the possibility of any meaningful redistributive taxation within the nation-state. In a world with open borders, if a particular nation-state imposes a high rate of

25. There is a question as to whether a global resource tax should be paid to any nation controlled by a corrupt and dictatorial government. In this situation, this nation's share of the tax might be held in trust for it until such time as the people of the nation were able to benefit from the proceeds of the tax.

26. For an important collection of essays on this specific topic, see Justice in Immigration, *supra* note 13.

domestic taxation for purposes of subsidizing the minimum hourly wage of its inhabitants,²⁷ high-skill workers will tend to emigrate to nation-states with lower rates of domestic taxation and low-skill workers will tend to immigrate to collect the benefits of the subsidized minimum wages. These tendencies will cause the pool of tax revenues for redistribution to dissipate, as there are fewer and fewer people from whom to collect the taxes and more and more people arriving to share the revenues. Equilibrium is reached when the amount of the tax or subsidy is equal to the cost of relocation. If the cost of relocation is fairly low, as it is when transportation costs decrease because of technological advantages, it becomes obvious that a world of open borders leaves little room for domestic wealth redistribution policies.²⁸

Thus, if there is to be any meaningful wealth redistribution at all, each nation-state must be permitted to restrict immigration and emigration. As long as it is impossible to have worldwide wealth redistribution at the level of a single global state, wealth redistribution must occur at the level of each nation-state. And if wealth distribution is to occur at this level, each nation-state must be permitted to close its borders to immigration and emigration.²⁹ Thus, the conclusion is inescapable: there is no possibility of distributive justice in a world of open borders.³⁰

All this may be true, but is it consistent with the fundamental principle of intrinsic equality? Why should the native of Bangladesh accept

27. The current Earned Income Tax Credit ("EITC") is an example (however imperfect) of a redistributive wage subsidy program. On the EITC, see Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 Harv. L. Rev. 533 (1995).

28. Economists have long been familiar with this phenomenon. See Henry J. Raymond, *Economics of State and Local Government* 113-16 (1992). In addition, several of the essays in *Justice in Immigration*, *supra* note 13, discuss this and other points relating to the economics of immigration policy. See, e.g., Alan O. Sykes, *The Welfare Economics of Immigration Law*, in *Justice in Immigration*, *supra* note 13, at 158, 171 ("It is certainly plausible that unrestricted migration into developed countries such as the United States, coupled with full entitlement for all immigrants to the public safety net programs, would create a sizable incentive for migration quite apart from any labor market opportunities, particularly for residents of countries with low standards of living and few safety net programs.").

29. I discuss here only migration for economic reasons and leave aside the separate problem of political refugees. For a discussion of this separate issue, see *Justice in Immigration*, *supra* note 13.

30. Mark Tushnet reaches the opposite conclusion, but that is because he considers it possible to establish a global government that would implement the requirements of worldwide distributive justice. See Mark Tushnet, *Immigration Policy in Liberal Political Theory*, in *Justice in Immigration*, *supra* note 13, at 147, 150-51, 155, 156 n.10. He states: "If we knew what worldwide distributive justice required, and sought to achieve it, immigration policy would surely seem quite secondary." *Id.* at 151. In a sense, I agree with him completely: If I accepted his premise that it were possible to achieve global distributive justice through global institutions of government, then I, too, would advocate open borders across nations. But having rejected the premise for the reasons stated in part I, *supra*, I cannot share his conclusion that restrictions on immigration are unnecessary for distributive justice.

this reasoning if it still deprives him of the right to move to Boston, the city of his dreams? Perhaps the logic is faulty, and we should reason from a right of open borders to the necessity of a unified world state, rather than from the impossibility of such a state to the necessity of closed borders.

If the obstacles to a single world state were only practical or temporary, I would assert this view. But the obstacles seem permanent and insurmountable, even purely as a matter of principle. The idea of a single world state, with the power to set population and education policies for the entire globe, is objectionable on grounds of human liberty, as I have already indicated in part I. The risk of tyranny is too great to justify such an omnipotent institution. The centralization of military power necessary to ensure that the global government gets its way on matters of economic and social policy makes the idea inherently obnoxious.³¹ Thus, we must start with the premise that a single global state with full redistributive powers is unattainable, and then reason to the conclusion that closed borders are necessary, rather than attempting to justify a single global state as necessary to preserve the right to open borders.

This conclusion, as depressing as it may be, can be reconciled with the fundamental principle of intrinsic equality by invoking the idea of the original position, articulated by the philosopher John Rawls.³² Rawls himself has been reluctant to apply this idea on a global scale,³³ but, like many others, I have never understood why not.³⁴ Indeed, it would seem that if we are truly committed to the idea of intrinsic equality, we inevitably are led to the belief that the parties in the original position should be the members of the entire human race choosing principles of global justice designed to regulate a fair system of international law. After all, if national identity is morally irrelevant to a person's intrinsic equal worth as a human being, as the principle of intrinsic equality maintains, then the original position should be constructed in such a way that national identity is irrelevant to an individual's status as an equal participant in the original position. Thus, the

31. As Fernando Tesón has observed, Kant recognized this truth long ago. See Fernando R. Tesón, *The Kantian Theory of International Law*, 92 Colum. L. Rev. 53, 87 (1992). Rawls also makes this point in his *The Law of Peoples* essay. See Rawls, *The Law of Peoples*, *supra* note 13, at 54-55.

32. For those unfamiliar with this idea, an excellent introduction can be found in Will Kymlicka, *Contemporary Political Philosophy* (1990). Very briefly, the idea of the original position is to imagine ourselves behind a "veil of ignorance," such that we are ignorant of any knowledge of our own personal circumstances or characteristics. All we know are general facts about human nature and history. Imagining ourselves in this situation, we are to ask ourselves what principles of justice we would insist upon in order to protect ourselves from being subjected to injustices once the "veil of ignorance" is lifted. See Rawls, *A Theory of Justice*, *supra* note 32, at 118-92.

33. See Rawls, *The Law of Peoples*, *supra* note 13, at 54-55.

34. See Beitz, *supra* note 1, at 128, 151-53; Pogge, *Realizing Rawls*, *supra* note 1, at 240, 250-53; Richards, *supra* note 1, at 292.

original position should be understood as encompassing all the persons of the world, and the veil of ignorance should prevent knowledge of their national identities along with all other identifying information.

But just because the original position should be global in scope, it does not follow that global justice requires the creation of a unified global state with the powers heretofore associated with separate nation-states. This is the key point, and this is precisely where I part company from other followers of Rawls. Charles Beitz, Thomas Pogge, and David Richards all believe that globalizing the original position requires globalizing the Rawlsian principle of distributive justice that the rich should be taxed for the benefit of the poor.³⁵ But this belief is mistaken. Even if it is true that invoking the idea of the original position at the level of the nation-state requires nationwide redistributive taxation, as Rawls famously argued in *A Theory of Justice*,³⁶ globalizing the original position does not yield an analogous requirement of global redistributive taxation.

On the contrary, recognizing the unacceptable threats to human liberty that a unified global state would present, the parties to the original position would adopt principles of global justice that call for the existence of separate, sovereign nation-states. The number and borders of these nation-states might not conform exactly to what the parties would find in existence once the veil of ignorance were lifted, and thus behind the veil they would adopt principles of global justice concerning the recognition of sovereign states in international law. These principles would permit the modification of borders or even secession or annexation, as circumstances warranted.³⁷ Nevertheless, the crucial point remains that the parties in the original position would adopt some system of separate and sovereign states, rather than a single global state.

Having made this fundamental choice, the parties would then recognize the necessity of permitting these separate and sovereign states to close their borders to immigration and emigration. Thus, the parties would understand, even if regrettably, that the fundamental need to protect human liberty from global despotism requires restricting the liberty of movement from one sovereign state to another. One unavoidable consequence of the human condition is simply that there

35. In Rawlsian terminology, these philosophers believe that the parties to the original position would adopt the so-called "difference principle," which requires improving as much as possible the lot of the most impoverished. See Pogge, *Realizing Rawls*, *supra* note 1, at 240-42, 274-75; Richards, *supra* note 1, at 275, 292. In an economy that permits the existence of private property, this Rawlsian difference principle requires the existence of redistributive taxes that take from the rich and give to the poor.

36. Rawls, *A Theory of Justice*, *supra* note 32.

37. See Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (1991); Thomas W. Pogge, *Cosmopolitanism and Sovereignty*, 103 *Ethics* 48, 69-75 (1992).

can be no fundamental human right to live anywhere in the world one wishes. We are, from the moment of birth, inevitably constrained by our national identities, much as we are inevitably constrained by our genetic endowment.

To be sure, the parties in the original position would adopt some measures to counteract the accident of birthplace, like the kind of global resource tax we have considered. The principle of intrinsic equality insists that the resources of all the world belong to all of us, even if we cannot demand the right to relocate to any part of the planet we prefer. Thus, ignorant about whether their particular locality was blessed with abundant natural resources or instead cursed with desolation, the parties in the original position would insist on global mechanisms to share the world's natural wealth among all the people of the world. But apart from measures of this type, the parties in the original position would recognize that the responsibility for distributive justice must lie with the separate, sovereign nation-states and not with any unified global regime. Each nation-state must be free to determine its own population growth and education policies,³⁸ as well as other policies concerning savings rates and capital investments, and thus each must be free to establish its own separate income-sharing programs.

Invoking the original position in this way shows that the conclusions of this essay are consistent with the fundamental idea of intrinsic equality. Because a global original position has built into its very structure the principle of intrinsic equality—each person in the world has an equal status as a party to the global agreement adopted in the original position—any principles of global justice that the parties in the original position would adopt must be understood to satisfy the fundamental idea that all humans have equal intrinsic worth. Thus, if I am right that the parties in a global original position would reject the idea of a unified world state with the powers currently associated with nation-states, then rejecting this idea must be consistent with intrinsic equality.

The lesson, then, is plain. Although we are all intrinsically equal in our common humanity, we are not all citizens of a single global polity. This conclusion may contradict the aspirations of some cosmopolitans, but that is because cosmopolitanism attempts to derive too much from

38. Even if the parties in the original position would rule impermissible in *any* country certain population growth or education policies—such as forced sterilization or mandatory boarding schools—there are many other policies that would remain optional at the discretion of each sovereign nation-state. For example, with respect to population growth, a legislature can encourage or discourage fertility by subsidizing or taxing the procreation of children. In the United States, the newly adopted tax credit of \$500 per child is an example of a subsidy that will, at the margins, encourage adults to have more children than they otherwise would. Conversely, if Congress had imposed on all parents a special tax of \$500 per child, this tax would have the effect of discouraging the procreation of additional children.

intrinsic equality.³⁹ The idea of equal *citizenship* and the ancillary obligations of distributive justice among equal citizens must be reserved for the members of the same democratic nation-state and do not extend across national boundaries to encompass all the people of the globe.

IV. A FOCUS ON REGIONALISM

Where does all this leave us in the quest for global justice? I suggest, for the time being anyway, that we focus our energies on regionalism, rather than globalism.⁴⁰ I once thought that regionalism was a cop-out, a refusal to live up to our full responsibilities as members of the human race. But I now think that there is much in the way of justice to be done simply by following the maxim "love thy neighbor as thyself." And we should not lose sight of the needs near home by stretching the boundaries of our compassion beyond the breaking point.

What does a regional focus entail for the United States? It entails, first and foremost, figuring out an appropriate relationship between ourselves and Mexico, our immediate neighbor, with whom we share so big a border and yet so little else. It is not merely that we lack a common language, but that our economic and political conditions are so different. A huge disparity exists between our per capita income, \$23,240, and theirs, which is only \$3470.⁴¹ We have a flourishing, competitive two-party democracy. Until very recently, they had an ossified one-party oligarchy, which has been plagued with electoral fraud and other forms of corruption.⁴² It is no wonder that so many Mexicans want to move to our country.

Forget about the children of Bangladesh. What about the children of Mexico? Why should a child born in Tijuana not have the right to move just up the road to San Diego? The case for open borders seems so much more compelling when we are talking about a short walk of several miles rather than a boat or plane trip halfway across the globe.

Of course, open borders between the United States and Mexico would put tremendous pressures on U.S. income redistribution programs. Would Mexicans have the right to participate in Social Secur-

39. Martha Nussbaum, a prominent cosmopolitan, disclaims advocacy of a world state. See Martha C. Nussbaum, *Patriotism and Cosmopolitanism*, in *For Love of Country: Debating the Limits of Patriotism 2* (Joshua Cohen ed., 1996). Like many of her critics, however, I see no point of invoking the idea of world *citizenship* without the corollary idea of a world state.

40. A similar focus on regionalism is developed in Janna Thompson, *Justice and World Order* 86-89 (1992), at 163.

41. World Bank, *supra* note 11.

42. See Michael C. Meyer & William L. Sherman, *The Course of Mexican History* 694-96 (5th ed. 1995). Although the latest elections in Mexico suggest that Mexico is making substantial strides toward the development of a fair and stable multi-party democracy, it is still too early to say that Mexico has such a system firmly in place.

ity, Medicare, and other U.S. efforts to obtain a fair society? These programs are already under tremendous pressure, however, in part from global economic forces that are causing increased disparities in earning power between high-skilled and low-skilled workers. Perhaps it makes sense to continue the economic and political integration of Mexico and the United States that began with NAFTA,⁴³ so that we can open the border to the free flow of people as well as goods and capital and then design institutions which will protect the social security of all people within North America.⁴⁴

Given the obvious hostility that would exist toward any further integration, it may seem fruitless to speculate about what conditions might justify such attempts. Nonetheless, the pressures for further integration may become increasingly strong if immigration from Mexico to the United States continues unabated despite American efforts to stem the flow. Thus, even if it may be fanciful speculation, it is worth considering what circumstances would have to prevail to justify a claim that the United States should enter a North American Union with Mexico and Canada, one that is comparable to the new European Union.

The first prerequisite for any North American Union would be for a system of multi-party democracy to firmly take hold in Mexico and then sustain itself for at least several decades. One cannot expect the United States and Canada to integrate themselves with Mexico until Mexico has shown that its commitment to multi-party democracy is as entrenched and irreversible as it is in the United States and Canada. The Mexican elections of July 1997, in which the PRI for the first time lost control of the country's legislature, were obviously a promising start to the development of a multi-party democracy, but Mexico needs to develop a lengthy track record of fair elections in which control of both the legislature and the presidency change hands from one party to another. Until then, it would be premature to expect Canada, the United States, and Mexico to enter some kind of North American political union of the type that is developing in Europe.

Exercising our imagination, let us suppose that fifty years from now, Mexico can demonstrate a half-century of free and fair elections, with

43. North American Free Trade Agreement, Dec. 17, 1992, 32 I.L.M. 289 (entered into force Jan. 1, 1994).

44. Immigration from Canada to the United States poses much less of an economic threat than immigration from Mexico because the current standard of living of Canadians is comparable to that of Americans. Thus, if Canada were integrated politically and economically with the United States, poor Canadians would not impose (on a per capita basis) any extra strain on America's social security programs. Moreover, the very fact that Canadians enjoy a standard of living comparable to Americans greatly reduces the pressure for Canadians to migrate south. Perhaps one of the long-term effects of NAFTA will be that, as the standard of living of Mexicans rises to approach that of Americans, Mexicans will feel less pressure to migrate north for economic reasons.

a thriving multi-party system. What then might Mexicans reasonably demand of the United States and Canada in terms of political integration on grounds of distributive justice? Suppose that, despite its democratic advancements, Mexico still suffers from a lower standard of living than either United States or Canada, and this gap still causes many Mexicans to attempt to migrate north.

One might then imagine the transformation of NAFTA into a North American Union whose constitution guarantees the citizens of Mexico, the United States, and Canada free movement across borders and whose legislature is empowered to adopt social security programs for the citizens of all three countries. But as long as the standard of living in Mexico is lower than in the United States or Canada, there obviously would be considerable resistance to any such union from many people in the latter two countries. The question I wish to consider here, however, is whether there *should* be such resistance. Or, instead, should the people of Canada and the United States embrace Mexicans as fellow citizens of a North American Union, regardless of differences in standard of living, as long as Mexicans show a sufficient commitment to multi-party democracy?⁴⁵

My own tentative view is that they should.⁴⁶ Putting aside considerations of self-interest, and considering only the demands of justice, we should realize that the interests of each Mexican deserve to be treated equally as the interests of each U.S. citizen. The principle of intrinsic equality requires this. An American child is no more deserving of a life of prosperity than a Mexican child simply because he or she had the good fortune of being born north of the border. If you were placed behind a veil of ignorance, so that you did not know whether you were born in Mexico or the United States, you would want the existence of institutional arrangements that equalized the life prospects for children born in both countries. For this reason, once Mexico establishes a sufficient commitment to democracy, Americans have a moral duty to support institutional arrangements that will make irrelevant which side of the border they are born on.

Of course, there is no denying that even apart from the sheer economic self-interest of Americans, the obstacles to any political inte-

45. It is arguable, of course, that a North American Union should encompass the countries of Central America and the Caribbean. But, for the sake of simplicity, I leave aside this point.

46. For purposes of this speculation, I will assume also that fifty years from now Mexico will have reduced fertility to what demographers call the "replacement rate"—that is, the rate at which each generation merely replaces itself. (This replacement rate would be equivalent to zero population growth were there no net immigration from abroad.) Although Mexico's current fertility rate of population growth is somewhat higher than the U.S. rate, Mexico is projected to reach the replacement rate by the year 2010. See World Bank, *supra* note 11, at 213. If this projection proves correct, then there would be no basis for objecting to a North American Union on the ground that Mexico has an inappropriately high rate of fertility. (Indeed, it is worth observing that Canada is not projected to reach the replacement rate until 2030. *Id.*)

gration with Mexico would be extraordinarily large—and perhaps ultimately insurmountable. It might be, for example, that the cultural differences between Mexicans, on the one hand, and Americans and Canadians, on the other, are so vast as to make impossible even a loose confederation of these three countries. But these cultural differences do not seem any greater than those between Germany and Portugal, for example. If Europe proves successful in its attempt at political integration, then perhaps there will be hope for North America as well.

The question necessarily arises why continental government—encompassing all of Europe or North America—is the optimal size of polity within which there should be freedom of migration and a common social security system for all. Why should such continental government be favored over the traditional nation-state? Or perhaps even some smaller territory, like Scotland, Bavaria, or Tuscany? After all, even before the nation-states of Europe were consolidated into their current size, there were separate and independent principalities. How is one to say as a matter of principle that it would be wrong or unjust to return to units of sovereign states of this size, each of which has the authority to close its borders to outsiders?

Perhaps there is no satisfactory way to answer this question. Robert Dahl, a leading theorist of democracy, has said as much: “[W]e cannot solve the problem of the proper scope and domain of democratic units from within democratic theory.”⁴⁷ But I wish to venture the following tentative argument in favor of continental government, at least at this stage in human history.⁴⁸

My argument is based on the proposition that the scale of government should be as large as is humanly feasible, without creating an exclusive monopoly of power in a single global state. I have rejected a single unified world government as posing too great a risk of tyranny. Continental government is the next level down in size.⁴⁹ As long as

47. See Robert A. Dahl, *Democracy and Its Critics* 207 (1989).

48. Continental government, of course, could be federal in nature, as is true in the new European Union. Thus, the creation of continental government need not lead to the destruction of the nations that comprise the federation. But as the experience of federalism within the United States has shown, to be a so-called “sovereign” state within a federal union is hardly the same as being a separate and independent state. To be sure, the amount of power that states have within a federal union is variable along a continuum. In other words, it is not a dichotomous alternative of either no power or complete power. Thus, the power of the member states of a federated North American Union could be considerably greater than the powers of the states within the United States. Even so, there is no denying that were a federated North American Union to come into existence, the power of the United States as an independent nation would be considerably diminished.

49. Because Asia is so vast, it might be necessary to divide it into several subcontinents. For example, I could imagine separating Asia into four subcontinents: north (Russia and the other members of the Commonwealth of Independent States), south (India and its neighbors), east (China and its neighbors), and west (the so-called “Middle East”). These four would be added to North America, South America, Eu-

each continent has its own sovereign government, with sufficient military power to repel any aggression from the other continental governments, then there is no possibility that a single power could subject all of humanity to a monolithic tyranny.

But, again, why my preference for continental government rather than some smaller size? There are two main reasons. First, there should be a preference for freedom of movement from one part of a continent to another part. A general preference in favor of freedom supports this view, and so does the principle of intrinsic equality.⁵⁰ No subgroup of people within a single continent should be empowered to deny access to a place that others might wish to live. The land as a common natural resource belongs to all the people of the continent, and thus individuals and families should be free to move about the continent in accordance with their own desires.⁵¹ As a government continental in scope is necessary if there is to be unfettered freedom of movement throughout the continent, continental government should be favored for this reason alone.

The demand for freedom of movement has more moral force today than it once did. The phenomenal advances in transportation technology since the industrial revolution are a contributing factor. In any event, for whatever reason, borders between nations now seem as arbitrary and artificial as borders between states within nations. Although these borders may serve some useful purposes, they should not act as barriers to people who wish to relocate elsewhere on their continent.

The other major reason to favor continental government is also the result of technology and the industrial revolution. The threat of pollution to the environment requires the existence of large-scale governments that were unnecessary before. Many major environmental problems, like acid rain, are continental in scope and pay no heed to the artificial boundaries between nation-states. Indeed, some of the world's greatest environmental threats are global in scope (like global warming), and the existence of a handful or so continental governments would make it much easier to negotiate and enforce multilateral treaties for the protection of the global environment. It does not take expertise in decision theory or group dynamics to realize that, for purposes of entering and enforcing agreements to protect the world's

rope, Africa, and the Pacific Islands (including Australia) for a total of nine continental governments.

50. For further arguments in support of open borders, see Tushnet, *supra* note 30, at 150-55. I agree with Tushnet's arguments insofar as they are applied on a continental, rather than global, scale. These arguments are derived from the basic premises of liberal (and egalitarian) political theory, which I embrace.

51. A continental government should be able, if it wishes, to set up a system of private property in land, but then any inhabitant of the continent should be free to purchase any parcel of land at its fair market value regardless of whichever particular region of the continent happens to be his or her birthplace.

environment, it would be much better to have between five and ten continental governments,⁵² rather than 185 or more independent nation-states. When unanimity is required, as it would be for any multilateral treaty, the problems of "free riders" and "hold outs" increase significantly as the number of parties involved rises.⁵³ Thus, there is a significant danger that 185 separate countries are simply unable to adopt and endorse successfully the regulatory measures that are necessary to protect the world's environment. Conversely, it is quite likely that five or ten continental governments could agree to mutually advantageous terms in the common interest of all humanity.

For this reason, above all others, it is important that Europe's experiment at integration proves successful. If it is, then perhaps there is reason to hope that the world might eventually consist of continental federations, each of which has a democratic federal legislature elected by fair and competitive multi-party elections. In this situation, global government could consist of a coordinating committee that operates on the principle of unanimous consent of all the continental federations. This coordinating committee would be the forum for adopting worldwide environmental treaties, and perhaps it would take on other functions, such as the protection of global security against the outbreak of war among the several continental governments. In this respect it would be like a modified version of the current U.N. Security Council. It could also be responsible for the kind of global resource tax I have discussed in this essay.

But this global coordinating committee could never have the kind of power that the continental governments might someday have. For none of the continental governments, or their member nation-states, would agree to give this global body a monopoly on the use of force. The threat of the rest of the world ganging up against any one continent is simply too great for any continent to deny itself the military capability to resist such aggression.

Thus, if one or more of these continental governments refuse to operate democratically, or otherwise abuse human rights, there is ultimately nothing that the rest of the world can do to stop them from their abusive practices. The unfortunate but unavoidable truth is that the democracies of the world will never be able to guarantee democracy to the one-fifth of humanity that lives in China, which is large enough to qualify as its own separate subcontinent.⁵⁴ Given this truth, we should concentrate on what we may be able to accomplish on our own continent, and leave the fate of the people of China where it ultimately must reside: in their own hands.

52. The exact number of continental governments would depend on whether or not Asia would be divided into several subcontinents. *See supra* note 49.

53. This is an elementary principle of public choice theory. *See* Dennis C. Mueller, *Public Choice II* (1989).

54. *See supra* note 49.

CONCLUSION

All the people of the world are equal in their intrinsic moral worth. There should be no disputing this fundamental humanitarian truth. But despite this truth we are not—and, for the foreseeable future, never will be—citizens of a unified global polity. The objections to worldwide social legislation, enforceable by an omnipotent global military, are so obvious and permanent that the idea would be ruled out in a Rawlsian original position. In the quest for social justice, the most that to which we could possibly aspire is the creation of continental governments that adopt fair social legislation for all the people of a single continent—Europe, North America, Africa, and so forth. Fair social legislation is the product of democratic government, and democracy can only be secured, at most, on a continental basis. Indeed, even the quest for continental government may prove too ambitious, leaving the province of distributive justice confined to the borders of each separate and independent nation-state.

This truth does not deny that democracy is a universal human right. Indeed, I would contend that the right to participate as an equal citizen in democratic elections is the most fundamental human right. It is derived directly from the basic principle of intrinsic equality, and it is ultimately from this principle that all human rights must flow. But although democracy is a fundamental human right, it cannot be guaranteed to all humanity by some omnipotent global regime.

In the end, let us not be quixotic, hoping for a global constitutional order that is unattainable. As much as we might wish it so, the government of the entire world can never mimic the government of the United States. Instead, let us set our sights on something that might actually be feasible: a North American Union, which, like the European Union, endeavors to secure democracy and prosperity for all the people of a single continent.

Notes & Observations